

99-0187 D.M.J. v. USX/ Geneva Steel Issued: 12/28/01

USX asks the Utah Labor Commission to review the Administrative Law Judge's award of permanent total disability benefits to D. M. J. under the Utah Occupational Disease Act and the Utah Workers' Compensation Act, Chapters 2 and 3 of Title 34A, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §34A-2-801(3) and Utah Admin. Code R602-2-1.M.

BACKGROUND AND ISSUES PRESENTED

Mr. J. filed an Application For Hearing to obtain occupational disease benefits for asbestosis allegedly caused by Mr. J.'s exposure to asbestos during his employment at USX. After an evidentiary hearing and medical panel referral, the ALJ awarded permanent total disability benefits to Mr. J. and held USX liable for the full amount of such benefits.¹

USX has filed a timely motion for review with the Labor Commission arguing that Mr. J.'s exposure to asbestos at USX is not the medical cause of his disability. Alternatively, USX contends that if Mr. J. is permanently and totally disabled due to a work-related disease, then the Employers' Reinsurance Fund ("ERF") is liable for a portion of Mr. J.'s benefits.

FINDINGS OF FACT

Apart from the question of the medical connection between Mr. J.'s work-related asbestos exposure and his disability, the ALJ's findings of fact are not in dispute. The Commission therefore adopts the ALJ's findings of fact except as modified below.

Mr. J. suffers from chronic obstructive pulmonary disease ("COPD") and congestive heart failure. These conditions are unrelated to his work at USX. In addition to the foregoing diseases, several physicians have diagnosed him with asbestosis² which they attribute to Mr. J.'s exposure to asbestos while in the United States Navy and while employed by USX. These physicians base their diagnosis on various CT scans and their interpretation of Mr. J.'s clinical symptoms.

On the other hand, Dr. Kanner has evaluated Mr. J. on behalf of USX and has concluded that Mr. J. does not suffer from asbestosis. According to Dr. Kanner, asbestosis is defined by the presence of pulmonary fibrosis. Once pulmonary fibrosis comes into existence, it is permanent. But the most recent and highest quality CT scan of Mr. J.'s lungs shows no fibrosis. Dr. Kanner therefore concludes that the earlier and less accurate CT scans of Mr. J.'s lungs, which were interpreted as showing fibrosis, were misread. Dr. Kanner also contends that Mr. J.'s clinical symptoms which were interpreted as indicating asbestosis were, in fact, caused by his congestive heart failure and COPD.

Because of the conflict between the opinions of Dr. Kanner and the other physicians, the ALJ appointed an impartial panel to consider the medical aspects of Mr. J.'s claim. The panel consisted of specialists in internal medicine, cardiovascular disease, pulmonary disease and occupational and environmental medicine. The panel undertook a comprehensive review of Mr. J.'s medical records and history, personally examined Mr. J., considered the opinions of the other physicians who had also examined Mr. J., and reviewed medical literature pertinent to Mr. J.'s condition. After the foregoing evaluation, the medical panel came to the same opinion as Dr. Kanner. The panel concluded that although Mr. J. suffered from asbestos-related pleural plaques, he did not suffer from asbestosis. The panel further concluded that none of Mr. J.'s current disability was caused by his exposure to asbestos at work, but was instead caused by his other non-work medical conditions.³

After careful consideration of all the medical evidence and opinion in this matter and for the reasons set forth in the medical panel's report and the report of Dr. Kanner, the Commission finds the medical panel's conclusions to be persuasive. The Commission therefore finds that Mr. J. does not suffer from asbestosis and that his current disability is not medically caused by his exposure to asbestos during the course of his employment at USX.

DISCUSSION AND CONCLUSION OF LAW

Section 34A-3-104 of the Utah Occupational Disease Act provides that "(e)very employer is liable for the payment of disability and medical benefits to every employee who becomes disabled . . . by reason of an occupational disease under the terms of this chapter."

In this case, Mr. J.'s claim for disability benefits under the Act is based on the theory that he suffers from work-related asbestosis which is a cause of his current disability. However, as noted in the preceding portion of this decision, the Commission has determined that the medical evidence does not support Mr. J.'s theory. While it is clear that Mr. J. was exposed to asbestos at USX, such exposure did not result in asbestosis, nor did it result in any other condition that is a cause of his current disability. Consequently, the Commission concludes that Mr. J. has not established a right to compensation under the Act.

Because the Commission concludes that Mr. J. is not entitled to permanent total disability benefits, it is unnecessary for the Commission to address the question of the ERF's liability for such benefits.

ORDER

The Commission hereby sets aside the ALJ's award of permanent total disability compensation benefits

to Mr. J. under the Utah Occupational Disease Act and dismisses Mr. J.'s claim with prejudice. It is so ordered.

Dated this 28th day of December, 2001.

R. Lee Ellertson, Commissioner

1. The ALJ's determination of permanent total disability and award of compensation was provisional pending completion of the rehabilitation/reemployment evaluation authorized by §34A-2-413 of the Workers' Compensation Act.
2. Dorland's Illustrated Medical Dictionary, 27th ed., defines "asbestosis" as "a form of lung disease (pneumoconiosis) caused by inhaling fibers of asbestos and marked by interstitial fibrosis of the lung varying in extent from minor involvement of the basal areas to extensive scarring; it is associated with pleural mesothelioma and bronchogenic carcinoma.
3. The medical panel submitted an initial report and a supplemental report which the ALJ viewed as contradictory. Although the reports may initially appear inconsistent, the inconsistency is resolved when the precise language of the reports is read in light of the questions posed to the panel and the definitions used by the panel.